IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 83 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE PRAMUKH FINSTOCK PVT. LTD. - Petitioner(s)
Versus
SHREE PRAMUKH INDUSTRIES PVT. LTD. - Respondent(s)

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Appearance :
MR AMIT S BARIYA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/03/2007

ORAL JUDGMENT

1. Shri Amit S.Bariya, learned advocate appearing on behalf of the petitioner company is absent on both the occasions when the matter is called out. Under

the circumstances, this Court has no other alternative but to proceed further with the present Company Petition ex-parte.

2. Present company petition has been filed by the petitioner for an appropriate order of winding up of the respondent company i.e. Pramukh Industries Pvt.Ltd. under the provisions of the Company Act, 1956. By order dated 05.12.2006, this Court admitted the present company petition and fixed the same for final hearing on 19th January, 2007. This Court also further passed an order that the admission and final hearing of the present company petition be advertised in two local news papers i.e. “Indian Express” English daily and “Sandesh” Gujarati daily both Ahmedabad editions and publication in the Government Gazette was dispensed with. Thereafter the present company petition has come up for final hearing on 19th January, 2007, however, it was adjourned on 12th February, 2007. Again it was further adjourned to 19th February, 2007 and 05th March, 2007. That is how, the present company petition is on board for final hearing. Office endorsement shows that affidavit of publication is not filed. No

affidavit has been filed affirming that the admission and final hearing of the present company petition has been advertised in two local news-papers as per order dated 05.12.2006. As per Rule 24 of the Company Court Rules, 1959, the admission and the final hearing is to be advertised in local newspapers. Rule 30 provides that affidavit or affidavits stating whether the petition has been advertised as prescribed by Rule 24 and whether the notices, if any, have been duly served upon the persons required to be served, shall be filed not less than 3 days before the date fixed for hearing and such proof of advertisement or of the service, as may be available, shall be filed along with the affidavit. As per sub-rule (2) of Rule 30, an affidavit of service on a company or its liquidator shall be in Form No.7 or 8 as the case may be. Rule 31 of the Company Court Rules, 1959 provides consequences on default of compliance as regards advertisement and service of notice as per requirement of the Rules.

“SECTION:31:- Procedure on default of compliance as regards advertisement and service of notice.

In default or compliance with the requirements of

the Rules or the directions of the Judge or Registrar, as regards the advertisement and service of the petition, the petition shall, on the date fixed for hearing be posted for orders of the Judge and the Judge may either dismiss the petition or give such further directions as he thinks fit."

3. Nothing is on record to suggest that the admission and final hearing of the present company petition has been advertised as required under Rule 24 of the Rules and even as per the order dtd.05.12.2006 no affidavit of service and/or of advertisement has been filed on behalf of the petitioner. There is no application for extension of time to give fresh advertisement and or no other prayer has been made for extension of date of final hearing. Thus, there is non-compliance of Rules 24 and 30 of the Company Court Rules, 1959.

4. Under the circumstances, the present company petition is required to be dismissed considering Rule 31 of the Rules and accordingly without entering into merits of the case and for non-compliance of Rules 24 and 30 and considering the

Rule 31 of the Company Court Rules, 1959, this company petition is dismissed. No costs.

(M.R.SHAH, J.)

Amit/-